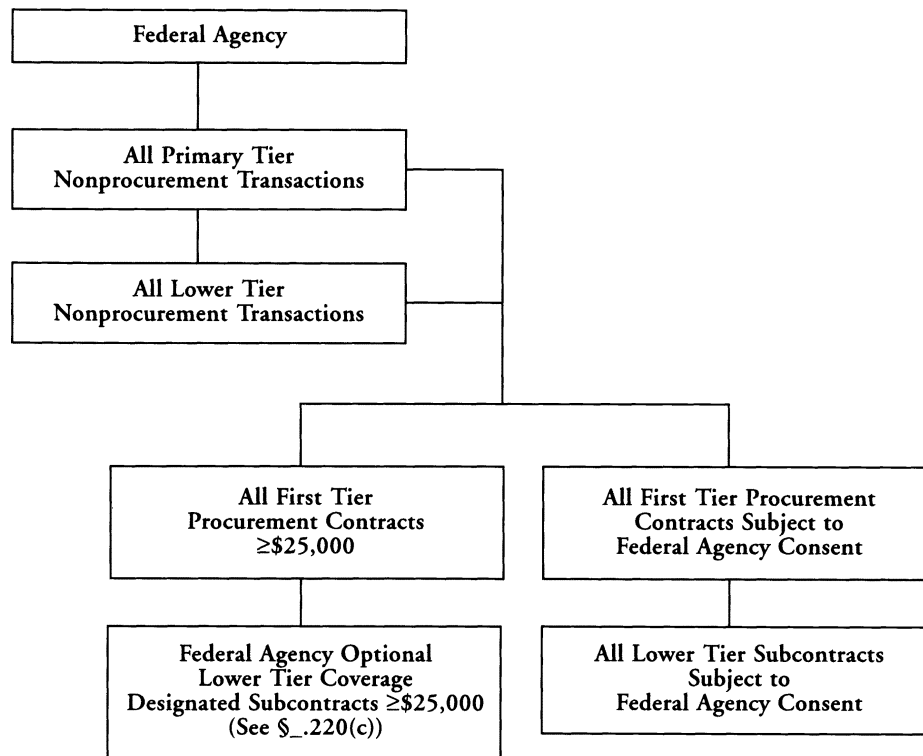


APPENDIX TO PART 1006—COVERED TRANSACTIONS

COVERED TRANSACTIONS



PART 1007—SALARY OFFSET

SOURCE: 57 FR 2837, Jan. 24, 1992, unless otherwise noted.

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AUTHORITY: 5 U.S.C. 5514, E.O. 12107, 3 CFR, 1978 Comp., p. 264; 5 CFR part 550, subpart K, and 22 U.S.C. 290f(e)(11).

§ 1007.1 Purpose and scope.

(a) This regulation provides procedures for the collection by administrative offset of a federal employee's salary without his/her consent to satisfy certain debts owed to the federal government. These regulations apply to all federal employees who owe debts to the Inter-American Foundation (IAF) and to current employees of the Inter-American Foundation who owe debts to other federal agencies. This regulation does not apply when the employee consents to recovery from his/her current pay account.

(b) This regulation does not apply to debts or claims arising under:

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(1) The Internal Revenue Code of 1954, as amended, 26 U.S.C. 1 *et seq.*;

(2) The Social Security Act, 42 U.S.C. 301 *et seq.*;

(3) The tariff laws of the United States; or

(4) Any case where a collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) This regulation does not apply to any adjustment to pay arising out of an employee's selection of coverage or a change in coverage under a federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(d) This regulation does not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the Federal Claims Collection Act, 31 U.S.C. 3711 *et seq.*, 4 CFR parts 101 through 105, 45 CFR part 1177.

(e) This regulation does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774 or 32 U.S.C. 716 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office. This regulation does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

(f) Matters not addressed in these regulations should be reviewed in accordance with the Federal Claims Collection Standards at 4 CFR 101.1 *et seq.*

§ 1007.2 Definitions.

For the purposes of the part, the following definitions will apply:

Agency means an executive agency as defined at 5 U.S.C. 105 including the U.S. Postal Service, the U.S. Postal Commission, a military department as defined at 5 U.S.C. 102, an agency or court in the judicial branch, an agency of the legislative branch including the U.S. Senate and House of Representatives and other independent establishments that are entities of the Federal government.

Creditor Agency means the agency to which the debt is owed.

Debt means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interests, fines, forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

Disposable pay means the amount that remains from an employee's federal pay after the required deductions for social security, federal, state or local income tax, health insurance premiums, retirement contributions, life insurance premiums, federal employment taxes, and any other deductions that are required to be withheld by law.

Hearing official means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed and who renders a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the President of the Inter-American Foundation.

Paying Agency means the agency that employs the individual who owes the debt and authorizes the payment of his/her current pay.

President means the President of the Inter-American Foundation or the President's designee.

Salary offset means an administrative offset to collect a debt pursuant to 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his/her consent.

§ 1007.3 Applicability.

(a) These regulations are to be followed when:

(1) The Inter-American Foundation is owed a debt by an individual currently employed by another federal agency;

(2) The Inter-American Foundation is owed a debt by an individual who is a current employee of the Inter-American Foundation; or

(3) The Inter-American Foundation employs an individual who owes a debt to another federal agency.

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§ 1007.4 Notice requirements.

(a) Deductions shall not be made unless the employee is provided with written notice, signed by the President, of the debt at least 30 days before salary offset commences.

(b) The written notice shall contain:

(1) A statement that the debt is owed and an explanation of its nature and amount;

(2) The agency's intention to collect the debt by deducting from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of interest, penalties, and administrative charges, including a statement that such charges will be assessed unless excused in accordance with the Federal Claims Collections Standards at 4 CFR 101.1 *et seq.*;

(5) The employee's right to inspect, request, and receive a copy of government records relating to the debt;

(6) The opportunity to establish a written schedule for the voluntary repayment of the debt;

(7) The right to a hearing conducted by an impartial hearing official;

(8) The methods and time period for petitioning for hearings;

(9) A statement that the timely filing of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing will be issued not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) A statement that knowingly false or frivolous statements, representations, or evidence may subject the employee to appropriate disciplinary procedures;

(12) A statement of other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are contractual or statutory provisions to the contrary, a statement that amounts paid on or deducted for the debt which are later waived or found not owed to the United

States will be promptly refunded to the employee.

§ 1007.5 Hearing.

(a) *Request for hearing.* (1) An employee must file a petition for a hearing in accordance with the instructions outlined in the agency's notice to offset.

(2) A hearing may be requested by filing a written petition addressed to the President of the Inter-American Foundation stating why the employee disputes the existence or amount of the debt. The petition for a hearing must be received by the President no later than fifteen (15) calendar days after the date of the notice to offset unless the employee can show good cause for failing to meet the deadline date.

(b) *Hearing procedures.* (1) The hearing will be presided over by an impartial hearing official.

(2) The hearing shall conform to procedures contained in the Federal Claims Collection Standards, 4 CFR 102.3(c). The burden shall be on the employee to demonstrate that the existence or the amount of the debt is in error.

§ 1007.6 Written decision.

(a) The hearing official shall issue a written opinion no later than 60 days after the hearing.

(b) The written opinion will include: a statement of the facts presented to demonstrate the nature and origin of the alleged debt; the hearing official's analysis, findings and conclusions; the amount and validity of the debt, and the repayment schedule.

§ 1007.7 Coordinating offset with another Federal agency.

(a) *The Inter-American Foundation as the creditor agency.* (1) When the President determines that an employee of another federal agency owes a delinquent debt to the Inter-American Foundation, the President shall as appropriate:

(i) Arrange for a hearing upon the proper petitioning by the employee;

(ii) Certify to the paying agency in writing that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date the Government's right to collect

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the debt accrued, and that Foundation regulations for salary offset have been approved by the Office of Personnel Management;

(iii) If collection must be made in installments, the President must advise the paying agency of the amount or percentage of disposable pay to be collected in each installment;

(iv) Advise the paying agency of the actions taken under 5 U.S.C. 5514(b) and provide the dates on which action was taken unless the employee has consented to salary offset in writing or signed a statement acknowledging receipt of procedures required by law. The written consent or acknowledgment must be sent to the paying agency;

(v) If the employee is in the process of separating, the Foundation must submit its debt claim to the paying agency as provided in this part. The paying agency must certify any amounts already collected, notify the employee, and send a copy of the certification and notice of the employee's separation to the Inter-American Foundation. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund or similar payments, it must certify to the agency responsible for making such payments the amount of the debt and that the provisions of 5 CFR 550.1108 have been followed; and

(vi) If the employee has already separated and all the payments due from the paying agency have been paid, the President may request unless otherwise prohibited, that money payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be collected by administrative offset.

(b) *The Foundation as the paying agency.* (1) Upon receipt of a properly certified debt claim from another agency, deductions will be scheduled to begin at the next established pay interval. The employee must receive written notice that the Inter-American Foundation has received a certified debt claim from the creditor agency, the amount of the debt, the date salary offset will begin, and the amount of the deduction(s). The Inter-American Foundation shall not review the merits of the

creditor agency's determination of the validity or the amount of the certified claim.

(2) If the employee transfers to another agency after the creditor agency has submitted its debt claim to the Inter-American Foundation and before the debt is collected completely, the Inter-American Foundation must certify the total amount collected. One copy of the certification must be furnished to the employee. A copy must be furnished to the creditor agency with notice of the employee's transfer.

§ 1007.8 Procedures for salary offset.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the President's notice of intention to offset as provided in § 1007.4. Debts will be collected in one lump sum where possible. If the employee is financially unable to pay in one lump sum, collection must be made in installments.

(b) Debts will be collected by deduction at officially established pay intervals from an employee's current pay account unless alternative arrangements for repayment are made.

(c) Installment deductions will be made over a period not greater than the anticipated period of employment. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. The deduction for the pay interval for any period must not exceed 15% of disposable pay unless the employee has agreed in writing to a deduction of a greater amount.

(d) Unliquidated debts may be offset against any financial payment due to a separated employee including but not limited to final salary or leave payments in accordance with 31 U.S.C. 3716.

§ 1007.9 Refunds.

(a) The Inter-American Foundation will refund promptly any amounts deducted to satisfy debts owed to the IAF when the debt is waived, found not owed to the IAF, or when directed by an administrative or judicial order.

(b) The creditor agency will promptly return any amounts deducted by IAF to satisfy debts owed to the creditor agency when the debt is waived, found

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not owed, or when directed by an administrative or judicial order.

(c) Unless required by law, refunds under this subsection shall not bear interest.

§ 1007.10 Statute of limitations.

If a debt has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the Government's right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts.

§ 1007.11 Non-waiver of rights.

An employee's involuntary payment of all or any part of a debt collected under these regulations will not be construed as a waiver of any rights that employee may have under 5 U.S.C. 5514 or any other provision of contract or law unless there are statutes or contract(s) to the contrary.

§ 1007.12 Interest, penalties, and administrative costs.

Charges may be assessed for interest, penalties, and administrative costs in accordance with the Federal Claims Collection Standards, 4 CFR 102.13.

PART 1008—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

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AUTHORITY: 41 U.S.C. 701 *et seq.*

SOURCE: 68 FR 66590, Nov. 26, 2003, unless otherwise noted.